

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No. 16118 OF 2001

Between:

Smt. B. Mani

...Petitioner

AND

Kapra Municipality, Ranga Reddy District,
Rep., by its Commissioner and two others

...Respondents

: O R D E R :

Counsel for the petitioner

: Shri S. Sridhar Singh for
Shri R. Vijayanandan Reddy

August 22, 2007

In this petition, the petitioner has prayed for restraining respondent No.1 from demolishing the front portion of her shop situated in Round Building, Kamalanagar, ECIL Post, Kusaiguda, Hyderabad.

In the affidavit filed by her, the petitioner has made a reference to the order of injunction passed by Principal Junior Civil Judge, Medchal in O.S No. 235 of 1995 and averred that without giving her notice and opportunity of hearing, the staff of Kapra Municipality started demolition of her shop on 2-8-2001. She has further averred that the shop is situated at a distance from the pavement, but the municipal authorities are bent upon to demolish the same without complying with the provisions of law.

In the counter affidavit filed by Shri N. Ravi Kiran, the then Municipal Commissioner of Kapra Municipality, it has been averred that the petitioner has encroached on the road and constructed shop in violation of the Zonal Development Plan of Kapra Municipality and, therefore, it has become necessary to demolish the same. However, it has not been denied that before undertaking demolition of the shop of the petitioner, the concerned officer did not give her notice as per the requirement of Section 228 of the Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act').

I have heard Shri S. Sridhar Singh and perused the record. Since respondent No.1 has not denied the petitioner's assertion that the exercise for demolition of her shop has been undertaken without giving her notice and opportunity of hearing, there is no escape from the conclusion that the action of municipal authorities is ultra vires the provisions of Section 228 of the Act.

Hence, the writ petition is allowed and the functionaries/officers of respondent No. 1 are restrained from demolishing the shop of the petitioner, except after following the procedure established by law. However, it is made clear that this order shall not be construed as an

impediment in the taking of appropriate action by the municipal authorities in accordance with the provisions of Section 228 of the Act. Rather, they are expected to enforce the provisions of law and remove the illegal/unauthorized construction, if any raised by the petitioner.

As a sequel to allowing of the writ petition, WPMP Nos. 20168 of 2001 and 22571 of 2007 filed by the petitioner for interim relief are disposed of as infructuous.

G.S. SINGHVI, CJ

August 22, 2007

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